

**DAVID STEBBINS,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** ) **Case No. 10-3305-CV-S-RED**  
 )  
 **RELIABLE HEAT & AIR, LLC, et al.,** )  
 )  
 **Defendants.** )

Pending before the Court is Plaintiff's Motion for Reconsideration of Order (Doc. 39). After careful consideration, the Court **GRANTS** the Motion to the extent it asks the Court to reconsider its Order of January 12, 2011. The Court made a clear mistake in not applying the 2008 Amendments to the Americans with Disabilities Act (the "ADA"), considering the alleged discrimination occurred in 2009, after the amendments went into effect. Accordingly, this Court's Order of January 12, 2011 is **VACATED** (Doc. 38).

Case 6:10-cv-03305-RED Document 42 Filed 01/21/11 Page 1 of 2

impairment whether or not the impairment limits or is perceived to limit a major life activity." 42 U.S.C. § 12102(3). Applying subsection (3) to this case, Plaintiff must show he was terminated because of an actual or perceived physical or mental impairment.

Plaintiff argues he is entitled to summary judgment based on 1) Defendants' statement "Plaintiff was terminated because of numerous customer complaints about Plaintiff's rudeness, abrasiveness, arrogance and his failure to do the job correctly," 2) Defendants' admission that they did not ask Plaintiff for medical records to prove his alleged disability, and 3) Defendants' statement that "Plaintiff was on the job for three days before he told us of his condition, but he said it made him speak harshly to people." Despite Defendants' statements and admission, Plaintiff has not shown Defendants perceived him as having a physical or mental impairment. Simply put, evidence showing a person is perceived as speaking harshly to others, and being abrasive, arrogant, and rude, does not establish that the person is perceived as suffering from a physical or mental impairment. Abrasiveness, arrogance, rudeness, and harshness are characteristics of a person, not impairments. Accordingly, the Court denies summary judgment on the issue of disability.

Plaintiff next asks for summary judgment on the issue of whether he was terminated due to his disability. As discussed above, Plaintiff has offered insufficient evidence showing he was perceived as having a disability. Therefore, it would not be proper to declare that he was terminated as a result of his alleged disability. After careful consideration, Plaintiff's Motion for Partial Summary Judgment remains **DENIED**.

**IT IS SO ORDERED.**

DATED: January 21, 2011

/s/ Richard E. Dorr

RICHARD E. DORR, JUDGE  
UNITED STATES DISTRICT COURT